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# Press Release

October 8, 2004

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## **THE CASE AGAINST CROSS COUNTRY BANK, APPLIED CARD SYSTEMS, AND THEIR OWNER, ROCCO A. ABESSINIO**

### **FACT SHEET**

Rocco A. Abessinio, owner of Cross Country Bank and Applied Card Systems, published full-page ads in West Virginia newspapers on September 10, 2004, announcing the eventual phaseout of the companies' Huntington office by July 31, 2005, and blaming this action on the dispute with the Attorney General's Office. Many present employees of Applied Card Systems have begun to question what is happening with this case and to seek out the truth on their own.

The truth is that Mr. Abessinio has repeatedly threatened to close the Huntington office to unfairly pressure the Attorney General's Office to drop its case without accomplishing the goal of protecting consumers and employees. As of today, Mr. Abessinio refuses to make any commitment to keep the Huntington office open regardless of any possible settlement.

For this reason, the Attorney General's Office has decided to issue this Fact Sheet in order to recount some of the pertinent events.

**FACT** In April, 2003, prior to the beginning of our investigation, Mr. Abessinio closed the offices of Applied Card Systems in Beckley, West Virginia, and Ashland, Kentucky, thereby reducing the number of employees in our area from 2,200 to 600. Only the Huntington office remained open.

**FACT** During the late spring of 2003, approximately 40 former employees of Applied Card Systems' Beckley office came forward to report that the company was engaging in serious debt collection abuse of hundreds of thousands of consumers across the nation and in West Virginia. These employees alleged that the unlawful practices were condoned by upper management, encouraged, and rewarded through bonuses and other incentives. A detailed list of these practices is attached.

**FACT** Many of these former employees confirmed the practices through questioning under oath and by signing sworn statements. This evidence has been filed with courts in West Virginia and other states.

**FACT** During the summer of 2003, we learned that Abessinio's companies had already been sued over these practices by several states and were being investigated by many others. In addition to West Virginia, the States of Minnesota, New York, Pennsylvania, Texas, and Wisconsin have suits pending against the Abessinio companies.

**FACT** In light of the nationwide concern about Mr. Abessinio's practices, many of which originated in West Virginia, and the overwhelming evidence of misconduct confirmed by his former employees, we decided to open a confidential investigation of Cross Country Bank, Applied Card Systems, and Mr. Abessinio.

**FACT** On December 9, 2003, our office issued an investigative subpoena requiring Abessinio's companies to produce certain documents or information to our office by January 9, 2004. The deadline passed without any response whatsoever. Several weeks later, Mr. Abessinio finally contacted our office through a third party and asked that we meet to discuss the various issues of concern, including compliance with our subpoena.

**FACT** On February 2, 2004, we met with Paul Sites, a Vice President of Applied Card Systems, and Alan Kaplinsky, an attorney with Ballard Spahr of Philadelphia, Pennsylvania. Mr. Abessinio's representatives led us to believe that they intended to respond to our investigative subpoena but simply needed more time.

**FACT** At the February 2, 2004, meeting the parties began to discuss resolving the case. In order to continue those discussions, we requested that Mr. Abessinio, Cross Country Bank, and Applied Card Systems agree to an extension of the statute of limitations so that the Attorney General would not be forced to choose between filing the suit prematurely or losing the claims.

**FACT** On March 2, 2004, while we were awaiting the promised response to our requests, Cross Country Bank and Applied Card Systems filed two separate suits against the Attorney General of West Virginia, thereby disclosing for the first time the existence of our confidential investigation. One of the suits sought to prohibit us from using a written affidavit from a former general counsel of Cross Country Bank, Ken Marino, in which Marino charged that he was wrongfully fired after trying unsuccessfully to remedy the companies' unlawful practices. Kanawha Circuit Judge James Stucky ruled on April 1, 2004, after a full hearing that there was no basis to prohibit our office from using the Marino affidavit and denied Mr. Abessinio's request for an injunction.

**FACT** On April 1, 2004, the Attorney General's Office filed a Counterclaim, Motion for Temporary Injunction, and Motion to Enforce Investigative Subpoena in one of the suits that Mr. Abessinio had already filed against our office. We also filed the sworn statements from former employees and other evidence in support of the case. Because the Attorney General had been sued, we were forced to file our claims.

**FACT** A hearing on our Motion for Temporary Injunction was originally scheduled for April 1, 2004, but was postponed when Mr. Abessinio removed the case to federal court. U.S. District Court Judge Charles Chambers ruled that the case had been improperly removed and issued an order returning it to the Circuit Court of Kanawha County. The hearing has been rescheduled for December 10, 2004, for Judge Stucky in the Circuit Court of Kanawha County.

**FACT** In August, 2003, Mr. Abessinio's lawyers advised our office by telephone that unless we settled the case on his terms in approximately one week, he would close the Huntington office and would blame our office for the closure.

**FACT** On May 28, 2004, Justice Cannizzaro of the Supreme Court of the State of New York ruled in the suit brought by the New York Attorney General's Office that Cross Country Bank and Applied Card Systems had "repeatedly and persistently" engaged in deceptive marketing practices and unlawful and deceptive debt collection practices and that the Abessinio companies should be placed under an injunction to protect New York consumers. A separate hearing will be held later by the court to determine the amount of money damages, civil penalties, and consumer restitution to be assessed against Abessinio's companies. The New York ruling was based primarily on the same evidence filed in the West Virginia case.

**FACT** It is not valid to compare the Florida settlement to the West Virginia case because Florida does not have strong state laws prohibiting abusive debt collection practices like the ones in West Virginia. Also, Florida's agreement contains a clause requiring Mr. Abessinio to pay the difference to Florida if any state obtains a higher settlement amount. It appears that Florida may have fallen victim to the same unfair political pressures that Mr. Abessinio is currently attempting in West Virginia. Thus, the Florida settlement should not be used as a measuring stick for settlements with any other state. Finally, the money paid in Florida was not for restitution for the consumer victims; instead, it was paid to the Florida Attorney General for use by that office.

**FACT** On August 25, 2004, a telephone conference was held between representatives of our office and one of Mr. Abessinio's lawyers to discuss possible settlement of the case. Prior to the call, our office had decided that any possible settlement must include a term requiring that the Huntington office remain open and be staffed at current levels for at least the next several years. Mr. Abessinio refused to make any commitment whatsoever to keep the Huntington office,

thereby preventing any possibility of settlement.

**FACT** Since that call, and continuing up until the present, Mr. Abessinio still refuses to commit to keep the Huntington facility open as a term of any possible settlement.

**FACT** In 2001 Cross Country Bank had approximately 5,000,000 accounts nationwide, but recent reports indicate that the number of accounts is now less than 900,000.

**FACT** The dramatic decrease in accounts occurred before our office began its investigation and was likely the result of an earlier investigation by the Federal Deposit Insurance Corporation (FDIC) and other regulatory agencies. The FDIC had intervened because of the companies' unsound banking and other unfair and deceptive business practices.

**FACT** Notwithstanding the many legal actions that remain pending, Mr. Abessinio has made almost a half of a billion dollars (\$500,000,000) since Cross Country Bank was founded in 1996 and has made \$136 million (\$136,000,000) after taxes in just the first six months of this year alone.

**FACT** Mr. Abessinio's employees have filed two separate class actions against his companies alleging that they have violated state and federal wage payment laws.

**FACT** Much has been said by Mr. Abessinio about the money sought by the Attorney General. However, if Mr. Abessinio would promise to keep the 600 jobs in West Virginia the Attorney General had agreed not to seek monetary penalties. Instead, the vast majority of the money demanded by the Attorney General from the Abessinio companies will be paid as restitution to the approximately 35,000 West Virginia consumers who were victimized by the companies' practices. Mr. Abessinio has refused here and everywhere else to refund this ill-gotten profit - Instead, he believes that a simple promise not to do it again should be sufficient.

**FACT** To this day Mr. Abessinio continues his threats to close the Huntington office in order to force settlement of our case on his terms only without promising to make any restitution to aggrieved consumers, without agreeing to any meaningful promise of future compliance with the law, and without promising to keep the Huntington facility open.

## **ALLEGED ILLEGAL PRACTICES OF CROSS COUNTRY BANK AND APPLIED CARD SYSTEMS**

**Using deceptive marketing practices to induce consumers to open credit card accounts by promising credit limits of "up to" \$2,500 when it knows or should know that consumers will be approved, if at all, for limits of approximately \$350, in violation of W. Va. Code § 46A-6-104.**

**Using deceptive marketing practices to induce consumers to open credit card accounts by failing to clearly and conspicuously disclose that the accounts will be charged with \$150 in application and membership fees before the first purchase is made and an additional \$10 in monthly maintenance fees thereafter, in violation of W. Va. Code § 46A-6-104.**

**Using deceptive marketing practices to induce consumers to purchase "Credit Account Protection" and "Applied Advantage" and other products with little or no value and/or charging consumers' accounts for such products without their actual knowledge or consent, in violation of W. Va. Code § 46A-6-104.**

**Debiting the accounts of consumers without their authorization, in violation of W. Va. Code § 46A-6-104.**

**Charging consumers a fee for making payments by telephone even when they have authorized the account debit,**

in violation of W. Va. Code § 46A-2-127(g), § 46A-2-128(c), § 46A-2-128(d) and § 46A-6-104.

**Oppressing or abusing consumers by causing their telephones to ring or engaging them in conversation repeatedly or continuously or calling them at times or places known to be inconvenient, such as their places of employment, with wrongful intent, in violation of W. Va. Code § 46A-2-125(d) and W. Va. Code § 46A-6-104.**

**Oppressing or abusing consumers by the use of profane or obscene language or other insulting or degrading conduct, in violation of W. Va. Code § 46A-2-125 and W. Va. Code § 46A-6-104.**

**Furnishing legal advice to consumers or engaging in other conduct deemed the practice of law, in violation of W. Va. Code § 46A-2-123(a) and W. Va. Code § 46A-6-104.**

**Threatening that non-payment of alleged debts may result in arrest or imprisonment, or other actions prohibited by the Act or other law regulating their conduct, in violation of W. Va. Code § 46A-2-124(e)(1), W. Va. Code § 46A-6-124(e)(2) and W. Va. Code § 46A-6-104.**

**Coercing or attempting to coerce consumers to pay alleged debts by accusing or threatening to accuse them of fraud, a crime, or conduct which, if true, would subject them to ridicule or contempt of society, in violation of W. Va. Code § 46A-2-124(b) and W. Va. Code § 46A-6-104.**

**Threatening that non-payment of alleged debts may result in garnishment of wages or attachment of property without first informing consumers that such actions cannot take place in the absence of a court order, in violation of W. Va. Code § 46A-2-124(e)(2) and W. Va. Code § 46A-6-104.**

**Unreasonably publicizing information relating to alleged indebtedness of consumers to any third party whatsoever, including co-workers, supervisors and others at their places of employment, in violation of W. Va. Code § 46A-2-126 and W. Va. Code § 46A-6-104.**

**Using any fraudulent, deceptive or misleading representations or means whatsoever to collect alleged debts, in violation of W. Va. Code § 46A-2-127 and W. Va. Code § 46A-6-104.**

**Misrepresenting the character, extent or amount of the claim against the consumer, in violation of W. Va. Code § 46A-2-127(d) and W. Va. Code § 46A-6-104.**

**Representing that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigative fees, service fees or other such fees and charges prohibited by the Act, in violation of W. Va. Code § 46A-2-127(g) and W. Va. Code § 46A-6-104.**

**Misrepresenting late fees and charges on consumers' credit cards, in violation of W. Va. Code § 46A-2-127 and W. Va. Code § 46A-6-104.**

**Misrepresenting to consumers that only the collection laws of Delaware apply to their conduct, and not the laws of West Virginia or the state where they reside, in violation of W. Va. Code § 46A-2-127 and W. Va. Code § 46A-6-104.**

**Making telephone calls to consumers or third parties at any place, including places of employment, and falsely stating that the call is "urgent" or an "emergency," in violation of W. Va. Code § 46A-2-129a and W. Va. Code §**

**46A-6-104.**

**Charging fees to consumers in excess of those authorized by the Act, in violation of W. Va. Code § 46A-7-111(1) and W. Va. Code § 46A-6-104.**

**Continuing to communicate directly with consumers when it appears that they are represented by an attorney and the attorney's name and address are known or could be easily ascertained, in violation of W. Va. Code § 46A-2-128(e) and W. Va. Code § 46A-6-104.**

**Compelling consumers to submit to binding arbitration governed by unfair and unconscionable terms and to waive their rights under the Act, in violation of W. Va. Code § 46A-2-121, W. Va. Code 46A-6-104 and W. Va. Code § 46A-1-107.**

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